

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DELPHON INDUSTRIES, LLC,

Plaintiff,

v.

INTERNATIONAL TEST SOLUTIONS INC.,
ET AL.,

Defendants.

Case No.: 11-CV-1338-PSG

**ORDER DENYING MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

(Re: Docket No. 11)

On May 5, 2011, Defendant International Test Solutions, Inc. ("ITS") filed a motion for a temporary restraining order against Plaintiff Delphon Industries, LLC ("Delphon"). The parties appeared for oral argument on May 9, 2011. Having considered the arguments presented in the briefs and at the hearing, and for the reasons discussed below, the motion for a temporary restraining order is DENIED.

"Only after an action has been commenced can preliminary injunctive relief be obtained. An action is commenced in federal court by the filing with the court of a complaint."¹ ITS has not yet filed a complaint (in the form of an answer and counterclaim, or countercomplaint, or otherwise) out of an apparent concern about the implication of such a filing on its anticipated motion to dismiss Delphon's First Amended Complaint. Whatever the merits of this concern, because ITS failed to commence an action against Delphon, this court lacks jurisdiction over ITS'

¹ *Stewart v. Immigration Naturalization Service*, 762 F.2d 193, 198 (2nd Cir. 1985) (internal citation omitted).

1 motion for injunctive relief against Delphon. Additionally, Civ. L.R. 65-1 requires that a motion
2 for a temporary restraining order be accompanied by a copy of the complaint. Although a
3 countercomplaint was attached as an exhibit to the motion, this countercomplaint has not been filed
4 as a pleading, and thus does not satisfy the Civ. L.R. 65-1 requirement.

5 **IT IS SO ORDERED.**

6 Dated: May 9, 2011

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8 PAUL S. GREWAL
9 United States Magistrate Judge
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United States District Court
For the Northern District of California